

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, May 21, 1997

ARCHITECT CONTRACT REQUIREMENTS

PURPOSE OF THE REPORT

1. To request that the State Allocation Board (SAB) approve standard provisions for architectural services required for inclusion in architect agreements entered into by school districts in the Lease-Purchase Program.
2. To request that the SAB amend a prior action pertaining to a model contract requirement.

BACKGROUND

Prior to May 25, 1994, districts were required to use SAB agreements for architectural services. The requirement was discontinued on that date pursuant to SAB action. However, the SAB directed staff to provide model contracts for architectural services upon request.

LEGAL ANALYSIS

To the extent that the SAB approves or recommends a model agreement, it injects itself into the district's management of the construction project. It also gives rise to potential State liability exposure when disputes arise from the performance of the work under the terms of a contract that will likely be characterized as the "State's contract". Even if the legal liability is minimal, the practical exposure remains when a district approaches the SAB requesting help to pay for additional costs resulting from the use of the "State contract". In addition, it is difficult to provide a singular agreement that fits all project circumstances.

Aside from the items contained in the proposed Form SAB 533A, the best advice and direction the SAB can give districts is to recommend they obtain quality legal and technical help in drafting all of their project-related contracts.

STAFF COMMENTS

In lieu of developing a model contract to serve as a generic model architect agreement for districts to use, the OPSC and the OPSC's legal counsel have developed provisions that must be included in all district architect agreements. The proposed form for these provisions is entitled, *ARCHITECT AGREEMENT CERTIFICATION*, Form SAB 533A. Copies of the proposed form and its instructional letter are attached for SAB consideration.

Once a district has selected an architect, it would be required to certify on Form SAB 533A that the terms and conditions of the architect's agreement are in accordance with the SAB fee schedules and other provisions, including Disabled Veteran Business Enterprise documentation. This review of the certification shall not be construed as an agreement to the terms and conditions found in the contract or that the SAB is a party to the contract.

RECOMMENDATIONS

1. Approve the proposed *ARCHITECT AGREEMENT CERTIFICATION*, Form SAB 533A, as the only requirement for school districts in the Lease-Purchase Program for all applications where funding of planning costs has not yet been released.
2. Delete the requirement for staff to develop a model contract for architectural services.